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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/759,508

01/15/2004

DayNa M. Decker

62077-00007

7063

35965

7590

01/17/2007

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EXAMINER

PRICE, CARL D

ART UNIT

PAPER NUMBER

3749

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

01/17/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/759,508

Applicant(s)

DECKER, DAYNA M.

Examiner

CARL D. PRICE

Art Unit

3749

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11/01/2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-70, 72, 75-87, 89-94, 96-99, 101, 119, 120 and 122-124 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-70, 72, 75-87, 89-94, 96-99, 101-17, 119, 120 and 122-124 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 07/20/2006.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### **Election/Restrictions**

Applicant's election without traverse of Group I: Claims **1-70, 72, 75-87, 89-94, 96-99, 101-17,119, 120 and 122-124** in the reply filed on **11/01/2006** is acknowledged.

Claims **125-136** directed to Group **II** have been cancelled and withdrawn without prejudice in the reply filed on **11/01/2006**.

### **Claim Rejections - 35 USC § 112**

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 30, 66 and 96 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 30 is indefinite since it depends on itself.

Claim 66 is vague since it is unclear what meaning is intended to be implied by the parenthesis and quotes.

Claim 96 recites the limitation "the fibers". There is insufficient antecedent basis for this limitation in the claim.

**Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims Rejected under 35 U.S.C. 103(a)**

Claims 1-27, 29-70, 72, 75-87, 89-94, 96-99, 101-17,119, 120 and 122-124 are rejected under 35 U.S.C. 103(a) as being unpatentable over SE9903818 (Ebeling) (English language translation provided) in view of US006017373 (Frisch) and FIREWOOD FOR YOUR FIREPLACE by Warren Donnelly (herein after referred to as Donnelly).

SE9903818 (Ebeling) shows and discloses (see the attached English language translation) a candle including:

- a body of meltable fuel; and
- a thin flat (figure 1) elongate wood or wood product wick (see the attached English language translation) disposed in the body and having an upper end extending above an upper surface of the body; and the body of the meltable fuel further comprises a gum or a resin, whereby when the wick is burned and consumes the meltable fuel;
- the upper end of the wick protruding from the candle substance; and
- the glue (10) receiving the thin flat wick forms, when solidified, a wick holder in a base of the body, the wick holder having an elongate slot in which a lower end of the wick is received.

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The English language translation of the SE9903818 (Ebeling) discloses the following:

**“State of the art**

Outdoor candles of the conventional art are made, on the one hand, of some form of combustible candle substance that can be molded: for example, a candle material consisting of paraffin, stearin, and/or tallow; ...”

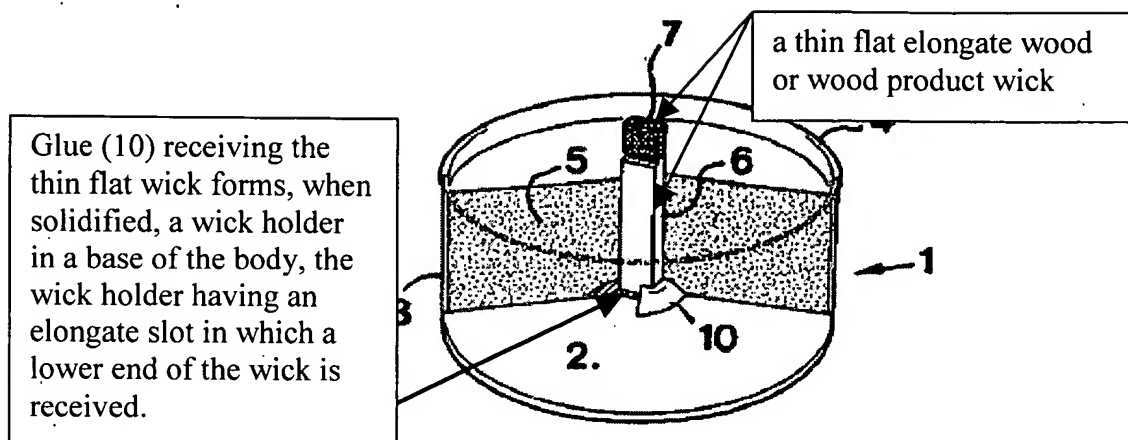
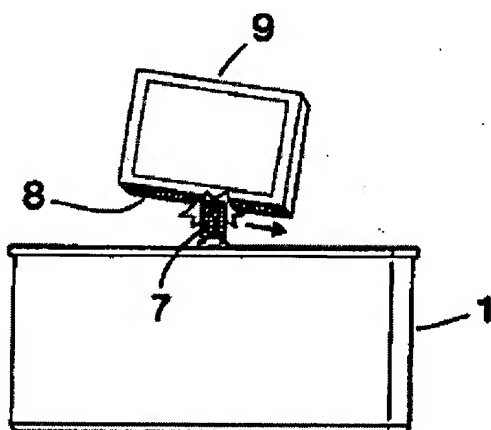
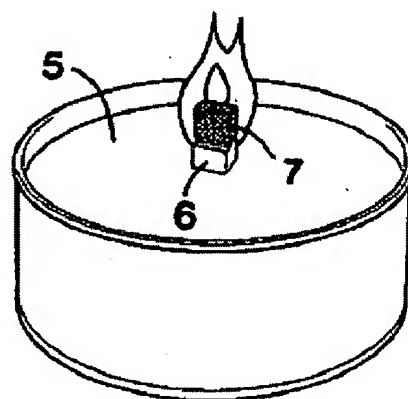
**“Detailed Description of a preferred embodiment of the invention**

In the drawing, Figure 1 shows a general view of cup or tin, which, in the usual manner, is comprised of a flat bottom 2 and a continuous cylindrical wall 3, which is open at the top, above its upper rim 4. A candle substance or other combustible substance 5 of a suitable composition has been poured into the cup. In the center of this substance 5, a wick 6 is anchored -- in accordance with present invention -- with the upper end of the wick protruding from the candle substance, and which has a head that can be ignited by scraping something against it 7. This ignitable head can be made of various materials (for example sulfur), which have the common characteristic that they can be ignited when an igniting body is scraped against the ignitable head. Figure 2 illustrates how a striking surface 8 of a conventional matchbox 9 can be used to light the ignitable head of the wick. ...

The actual wick 6 can advantageously be made of a material that retains its shape, for example some kind of wooden material, which is impregnated with a combustible material, after which the ignitable head 7 is applied to the top of the wick. The outdoor candle is made in the conventional way with the wick being placed in the center if the bottom of the cup 2 and fixed in that position, for example, by using a daub of glue 10 ...”

(Highlighting and Underlining Added)

SE9903818 (Ebeling) shows and discloses the invention substantially as set forth in the claims with possible exception to apparatus creates pleasant crackling sounds.

**Fig 1****Fig 2****Fig 3**

**US006017373 (Frisch)** teaches, from applicant's same combustible flame producing field of endeavor, snapping and popping of burning wood arises from heating of moisture and sap which naturally exist in the log. **US006017373 (Frisch)** also teaches that it is known and desirable duplicate the sound of burning natural logs in artificial burning flame producing article or apparatus, for the purpose of providing an ascetically pleasing sound from the artificial article.

**US006017373 (Frisch)** teaches the following:

(7) Typical prior art artificial logs burn much more quietly than natural logs and do not duplicate the roar of burning natural logs. Also, as discussed below, **natural logs exhibit loud snapping and popping, the snapping and popping arising from heating of moisture and sap which naturally exist in the log.**  
(Highlighting and Underlining Added)

**Donnelly** teaches from applicant's same the wood fire field of endeavor, that it is well known to select a given type of wood for the purpose of intentionally creating a "crackling fire" (see page 18, line 5) when burned, according to the preference of the person to, for example, create a "cheerful atmosphere, to attract friends for a cozy evening" (page 17, last line). **Donnelly** also teaches that "Almost any wood will pop and throw sparks" due to rupturing of wood cells resulting from "water in the wood being changed to steam as the wood is heated" and "from pitch, resin, and oils contained in the wood" (page 34, line 3- page 35, line 3). **Donnelly** further discloses and teaches that the degree that a given wood species produces "sparks", necessarily accompanied by a "loud pop" as wood cells rupture, is known (page 85, last full paragraph). In this regard **Donnelly** provides a "Table of Firewood" wherein "The different burning characteristics of each wood are listed so you should make your selection according to the type of fire you desire: ease of starting, high heat, fragrance, sparks, smoke, coaling qualities, etc." (pages 88-95).

In regard to claims **1-27, 29-70, 72, 75-87, 89-94, 96-99, 101-17,119, 120 and 122-124**, for the purpose of duplicating the ascetically pleasing snapping or popping sound of a natural wood fire, to create a “cheerful atmosphere”, it would have been obvious to a person having ordinary skill in the art to form the wood wick material of **SE9903818 (Ebeling)** from a wood product known to produce a desired level of crackling, sapping or popping sounds, in view of the teaching of **US006017373 (Frisch)** and **Donnelly**.

In regard to claim 2, wood grain is known to be generally straight. (see **US000383822 (Munger)**).

In regard to claims 57 and 84, Official Notice is taken that it is well known to form burner wicks from a wood product of pressed wood particle/powder product or a high density fiberboard material (see **US0123917 (Ladd)**).

In regard to claims such as 61 and 116, Official Notice is taken that it is well known to provide candle fuel, and therefore the embedded wick, with scented oil for the purpose of producing a desired fragrance (see **Fredricks (3,175,876)**).

In regard to claims 29 and 31, Official Notice is taken that it is well known to form combustion wicks from pressed wood with bits of fiber (see **US0059839 and Ladd (123,917) US00197902**) and adhesive in the pressed wood and wherein the adhesive is resin, gum, or natural glue( see **US00431033**). As such in view of that which is well known and for the known purpose it would have been obvious to a person having ordinary skill in the art to form the candle in the manner set forth in the claims.

In regard to claims 34 and 98, the wood wick of **SE9903818 (Ebeling)** will necessarily be sealed with wax as it is located with a solidified body of wax type fuel.

In regard to claims such as 37, 38, 39, 106, 107 and 115, since bleaching, dyeing and apply printed images to the wick do not affect the operational characteristic of the wick and amount to nothing more than merely an ascetic effect, these limitation can be given no patentable weight.

In regard to claims such as 5-11, 30, 35, 49, 62, 72, 77, 90, 91, 92, 101-105, 109, 113, 114, 122, 123, as noted herein above, since the selection of the wood would necessarily depend on numerous design concerns such as the desired degree of crackling, snapping and popping of the burning wood to select any one of Prunes Serotina, Hardwood, Softwood, Cherry, Poplar,



Maple, Birch, Beech, Basswood, Aspen, Yellow, Buckeye, Oak, cellulose and lignin, Cedar, Spruce, Cypress, Pine, Pacific Yew, Silverbell, Witch Hazel, Tropical Wood, Rimo, Pillarwood, Wenge, Rosewood or Bamboo, etc. can be viewed as nothing more than merely a matter of choice in design absent the showing of any new or unexpected results produced therefrom over the prior art of record.

In regard to claims such as 13-16, 18, 20-22, 40, 65, 66, 68, 81, 82, 83, 119 and 120, Official Notice is taken that it is known to make candle from meltable fuel(s) including petroleum (paraffin), mineral (montan), synthetic wax, clear candle waxes, or "gels", beeswax, carnauba, candelillia or vegetable-based wax, including stearic acids, UV inhibitors, polyethylene, scent oils, or color pigments, a vegetable-based wax including palm and soy, cotton, olive, linseed, castor, peanut and jojoba. As such in view of that which is well known and for the known purpose it would have been obvious to a person having ordinary skill in the art to form the candle in the manner set forth in the claims.

In regard to claims such as 17, 19, 23-27, 32, 33, 41, 44, 47, 54, 58-60, 67, 75-80, 85 and 89, since the relative dimensions of the wick and fuel body, the wick size, number and shape of the wick(s), would necessarily depend on numerous design concerns such as the desired over size and shape of the candle article, the desired amount of light to be produced, etc. to form the candle of **SE9903818 (Ebeling)** in the manner set forth in the claims can be viewed as nothing more than merely a matter of choice in design absent the showing of any new or unexpected results produced therefrom over the prior art of record.

#### **Allowable Subject Matter**

Claim 28 and 94 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### **Conclusion**

See the attached USPTO for, 892 for prior art made of record and not relied upon which is considered pertinent to applicant's disclosure.

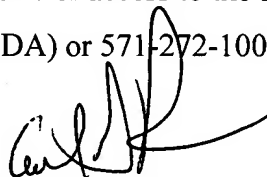
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**USPTO CUSTOMER CONTACT INFORMATION**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CARL D. PRICE whose telephone number is (571) 272-4880. The examiner can normally be reached on Monday through Friday between 6:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Josiah Cocks can be reached on (571) 272-4874. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



CARL D. PRICE

Primary Examiner

Art Unit 3749

CP